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QUERIES

Offered to the Publick, by a Well-wisher of the present Constitution in Church and State.

ALL Mankind have a Freedom of thinking as they please; it is a Privilege which every Man exercises within the Closet of his own Breast, and which no Power can controul, nor Violence destroy. We in this Island are particularly happy in having likewise the Freedom of expressing those Thoughts in an open Manner, and of appealing to the Publick for the Reasonableness of them, and for the Truth of what we advance. This is a Blessing which we enjoy in the Liberty of the Press, and which I think cannot be exerted on a more proper Occasion, than by every one offering his own private Observations upon some Clauses of a late Act, hurried on at the Conclusion of this last Session, and intituled, *An Act for the more effectual, &c.*

As our Representatives seldom think fit to communicate the Matters which come before them to those whom they represent, but decide in Things where we are all equally concerned, entirely upon their own particular Judgment or Interest, they cannot take it amiss if their Constituents use the Freedom to insinuate their Opinion, even tho' the Thing be already done; especially being they do not pretend to Infallibility, but are ready (which is indeed the primitive and principal Office of a Parliament) to redress the Grievances of their Fellow-subjects, from whatever Cause they proceed: And how shall they redress Grievances unless they be represented? Acts of Parliament are binding when once passed, but are still subject to future Alteration and Amendment.

Nothing, to be sure, is more inconsistent with and destructive of all Government and Law than Mobs and Riots, and nothing ought to be more severely punished than barbarous,

inhumane, or even only illegal Actions committed in ſuch a Way: But, while we puniſh the Offenders, let us not likewiſe fall foul upon the Innocent; nor let us make that an Offence which Nature has made a Duty. Yet there is a Clauſe of the above-ſaid Act, by which it is enacted, "That all Perſons who ſhall conceal, aid, abet or ſuccour "thoſe declared Fugitives, or any of them, and ſhall be "convicted of ſo doing, ſhall be puniſhed with the Pains "of Death, and Confiſcation of Moveables." And the three laſt Clauſes, not only encourage Impeachers, by offering them a Reward of Two hundred Pounds upon the Conviction of every Perſon ſo impeached, but, to make the earning of it the more eaſy, allow them likewiſe to be Witneſſes againſt thoſe very Perſons whom they ſo impeach; or (which is the ſame Thing) ſuſtain their Information as a ſufficient Proof of itſelf towards the Conviction of the Pannel. And the whole concludes with an Article very neceſſary indeed in this Caſe, *viz. Any Law, Uſage or Determination to the contrary thereof in anywiſe notwithſtanding.*

The ſole Uſe of Governments and Laws is no doubt to ſecure us in our Rights and Properties, in the ſafe Enjoyment of our Lives and Fortunes. Hitherto our Laws have been found as effectual for that Purpoſe as thoſe of any other Kingdom: Would it not then be Raſhneſs and Preſumption in us, haſtily, and upon account of a ſingle Accident, to reverſe all that our wiſe Forefathers have done, and ſubſtitute ſomething in its Room which probably may produce worſe Accidents, and yet not prevent the like in Time to come?

It is provided by the Laws upon which our Conſtitution is founded, "That no Perſon's Life ſhall be taken away "without being firſt libelled for a capital Crime; then at leaſt "two habile Witneſſes muſt prove the Crime libell'd againſt "him; and, after all, Fifteen unexceptionable Perſons, "his Peers, muſt determine how far this Proof is relevant, "and the Libel made out, before Sentence can be pro-"nounced." Law and Reaſon ſeem to point out ſeveral Sorts of Perſons as inhabile Witneſſes, *viz.* ſuch as are nearly related to the Pannel, ſuch as entertain Malice, and ſuch as are bribed, or have an Intereſt in his Conviction. In Matters of Life or Death, 'tis impoſſible to be too cautious: 'Tis an old Maxim in Law, To chuſe always the moſt favourable Side of a doubtful Caſe; and better let Twenty guilty eſcape, than one innocent Perſon ſuffer. But here we ly entirely at the Mercy of an Informer, who

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ſhall likewiſe appear againſt us as a habile Witneſs, and prove the Libel (which was entirely form'd upon his Information to the King's Advocate) by repeating only the ſame Story to the Lords on the Bench. If the Perſon thus accuſed be not likewiſe convicted, the Informer has no Reward: Now, when he has already incurred the Odium by informing, and the Conviction depends entirely upon the Proofs which he as a Witneſs ſhall bring; May it not be reaſonably ſuſpected, that he will ſtretch his Evidence to make good his Information, rather than loſe the Reward, the principal End he had in informing? To the Benefit, which thus accrues to him, add the other Ends of Malice and Revenge which he may likewiſe ſerve, and tell me, Is not this making a Man an Informer, a Party concerned, and a Witneſs all at the ſame Time?

Let us conſider a little the Character of an Informer, and we may then better judge how far he can be look'd upon as a habile Witneſs. By an Informer we mean a Perſon who, incited only by the Promiſe of Reward and Lucre, makes it his Buſineſs to pry into and to detect his Fellow-citizens. If a Man informs from a Principle of Conſcience, and from a Love of the Preſervation of the State, and the Execution of the Laws, he acts, not only a juſt, but an honourable Part. But this is not the Caſe here: Theſe need no Premium to prompt them to their Duty. Bribes were only made for Rogues; and ſuch will be as eaſily brought into a bad Action as into a good one, and will accuſe the Innocent as well as the Guilty, to gain the Reward. 'Twere needleſs to obſerve how vile and infamous the Office of an Informer has been reckoned in all Nations. Amongſt the *Romans* it was particularly odious, and towards the later Times the greateſt Plague and Bane of that Republick. It may be alledged, That, tho' an Informer be an Evil, yet he is a neceſſary Evil in a State, and, as ſuch, has not only been allowed, but even rewarded in all Civil Governments. With all my Heart: Let him be rewarded as an Informer, but not as a Witneſs too. To offer a Witneſs a Premium upon Conviction of the Pannel is direct Bribery, and was never allowed by any Law before, being moſt iniquous and unreaſonable. If it be replied, That in extraordinary Caſes extraordinary Remedies may be uſed, and that, as we cannot be too ſevere and diligent in diſcovering the guilty Perſons, it may be here allowed to adduce the Informers as Witneſſes too. I anſwer, Extraordinary Remedies may be uſed, but only when the ordinary ones will not ſerve the Turn: And that tho'

this perhaps might be allowed, if the Caſe were ſuch as ſuppoſed a Scarcity of Witneſſes; yet here, where it is ſaid to be concerted and carried on by a great Number of Perſons, I think there is no Room to plead that in Excuſe. No doubt he who knows enough of the Affair, to be able to impeach one, may eaſily find two more, as well acquainted with it as himſelf, who may ſerve as habile Witneſſes. But if, after all, two legal and unexceptionable Witneſſes cannot be found to prove the Tenor of the Libel; Will you hang a Man without being duly convicted, and who may be really innocent, or at leaſt ought to be ſuppoſed ſo by Law, until a full Proof can be brought to the contrary?

This is not all: Rogues are not only encouraged to earn the Price of Blood by informing, but honeſt Men muſt be frightned into it likewiſe, and obliged to turn Informers in Self-defence; nor can any Ties of Friendſhip or Kindred exempt them from performing this cruel Office. Our Laws have ſo great a Regard to Humanity, that they demand none to appear againſt their near Relations, no more than it obliges them to bear Witneſs againſt themſelves; and, if the Judge happen to be too nearly concerned in the Parties, he is allowed to quit the Bench: But here, we are not only compelled to inform, but to appear as Witneſſes too, and be immediate Inſtruments in taking away the Lives of even thoſe perhaps to whom we owe our own. The *Spaniſh* Inquiſition proceeds pretty much in the ſame Manner, obliging the Husband to delate the Wife, and the Wife the Husband, *&c.* under Pain of being looked upon as equally guilty, and of ſuffering the ſame Puniſhment which the real Offender ought to ſuffer.

The Story of *Brutus* pronouncing a juſt Sentence, and ſeeing the Law put in Execution againſt his own Sons, is certainly the greateſt Example of Heroiſm and publick Spirit extant in Hiſtory: Nay, 'tis carried ſo far in Oppoſition to Humanity, that, unleſs we take in the particular Circumſtances of the Times, it may even deſerve to be condemned. *Livy* ſays of him, *Et qui ſpectator erat amovendus eum ipſum fortuna exactorem ſupplicii dedit.* And *Virgil* adds,

Infelix, utcunque ferent ea facta minores
Vincet amor Patriæ laudumque immenſa cupido.

Upon the whole, I believe every Body muſt agree, that it is an Action rather to be admired than imitated. But here we are, under the higheſt Penalties, obliged all to be *Brutus*'s, nay, ſomething more; for inſtead of the Love of Praiſe which he had in View, as well as the Love of his Coun-

Country, we muſt do the ſame inhumane Action ſtigmatized with everlaſting Shame and Contempt. His ſhowed a Greatneſs of Soul, ours muſt proceed from a Weakneſs; His was the Effect of too ſevere a Virtue, ours muſt be Neceſſity: For tho' we have a Freedom of Choice, yet it is a fatal Choice, by which either ourſelves or our Friend muſt fall.

Suppoſe that I have a near Relative, whom I have a particular Friendſhip for, and ly under the greateſt Obligations to; he has been engaged, perhaps without either my Conſent or Privacy, in this unlucky Affair, and is a declared Fugitive: Being thus brought under the greateſt Difficulties to preſerve that Life which Nature has made us ſo averſe to part with, as his laſt Refuge he throws himſelf into my Hands, and comes under the Sanctuary of my Roof. What ſhall I do? Shall I ſhut the Door and the Bowels of Compaſſion upon him? Our former Friendſhip forbids it. Muſt I take him in, and inform againſt him? Common Humanity oppoſes it. Muſt I turn Witneſs, and ſell his Life? The Laws of God and Nature cry out againſt it. Shall I receive and entertain him then, till Juſtice claims him of me in particular? No; Self-preſervation will not have it ſo. ſince this new Act has made that Office, which both Humanity and Friendſhip ſeem to demand, a Crime equally hainous with open Murder in Oppoſition to all Law and Government.

If it be a Crime not to give up Offenders to the Law, before the Law claims them directly of us, ſure it cannot deſerve ſo heavy a Puniſhment: Baniſhment would be grievous, Death is more, but Confiſcation too makes it almoſt intolerable, rendring innocent Poſterity miſerable becauſe their Fathers had more Humanity than to betray their Friend. There is one Thing I think ſtill a little worſe, whioh might have been impoſed, and which actually was by one of the *Roman* Emperors, *viz.* To oblige us to turn Hangmen and butcher them ourſelves, or, with the ſame cruel Alternative (which is the preſent Caſe) both to bleed under the Hands of the publick Executioner together. In *France* the King and Council can ſend the Subject to the *Baſtile* or to Baniſhment, and give no Reaſon but that it is his Pleaſure. The *Czar* can command them to lay down their Head upon the Block, and they obey without asking wherefore. The *Turk* can ſend his Mutes, and the Baſhaws will kiſs the Bow-ſtring. But thank GOD we live in *Britain*; May he grant us always

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to be treated, and always to behave as *Britons*, and as *Free Britons*.

In the Act ratifying the Treaty of Union of the two Kingdoms of *Scotland* and *England*, *January* 16th 1707, the Act for ſecuring of the Proteſtant Religion, and Presbyterian Church-government, is expreſly declared to be a fundamental and eſſential Condition of the Treaty of Union in all Time coming: By which Act, the Proteſtant Religion, Worſhip, Diſcipline and Government of this Church, are to continue without any Alteration to the People of this Land in all ſucceeding Generations, as is contained in the *Confeſſion of Faith*, with the Form and Purity of Worſhip preſently in Uſe within this Church, and its Presbyterian Church-government and Diſcipline; that is to ſay, the Government of the Church by Kirk-ſeſſions, Presbyteries, Provincial Synods and General Aſſemblies, to remain and continue unalterable; and the ſaid Presbyterian Government to be the only Government of the Church within the Kingdom of *Scotland*. And it is likewiſe declared, That none of the Subjects of this Kingdom ſhall be liable to, but all and every one of them for ever free of, any Oath, Teſt or Subſcription within this Kingdom, contrary to, or inconſiſtent with the foreſaid true Proteſtant Religion and Presbyterian Church-government, Worſhip and Diſcipline, as above-eſtabliſhed; and that the ſame ſhall never be impoſed upon, or required of them in any Sort. And this whole Act is to be held and obſerved in all Time coming, as a fundamental and eſſential Condition of any Treaty of Union to be concluded betwixt the two Kingdoms, without any Alteration thereof, or Derogation thereto, in any Sort for ever.

Now, tho' I am no Clergyman, and ſhall leave thoſe that are to their own Determinations, I ſhould be glad to learn, Whether or not it be an Incroachment upon their Church-diſcipline, for the Civil Power to impoſe upon them the reading of any Act on the Lord's Day in Church in the Time of Worſhip?

Whether or not ſuch a Thing, if lawful, does not become a Sort of Teſt, when it is impoſed upon the Clergy of one Half of the Kingdom, and not upon thoſe of the other; eſpecially ſince in the preſent Caſe the Fugitives are more likely to make that the Place of their Reſidence, than this at Home, where they are too well known to eſcape Notice?

Whether

Whether or not the above-ſaid Act does not put it entirely out of the Power of the Civil Government to inflict Church-cenſures, ſuch as the hindring to ſit in Kirk-ſeſſions, Presbyteries, Synods and General Aſſemblies, upon the Clergy of the Church of *Scotland* now and in all Time coming?

Whether or not the Reaſons for enacting the above-ſaid Act at firſt, be not as ſtrong and binding now as ever, *viz.* the Repreſentatives of this Part of the Nation being ſo inconſiderable in Oppoſition to thoſe of the other, and our having no Members out of the Body of our Clergy to repreſent the Church, as thoſe of the other Part of the Nation have?

Whether or not therefore the Presbyterian Clergy of the Church of *Scotland* do not make a Body and Government by themſelves, as Church-men, entirely ſeparated from and independent of the Civil Government?

Whether or not the Civil Government can impoſe any Thing, or inflict Puniſhments upon them in the Capacity of Members of the Church of *Scotland*, or in any other Capacity but that of Subjects, and ſo liable to the ſame Laws and Puniſhments only with other Subjects?

Theſe are ſome Doubts which I ſhould be glad to have reſolved by an abler Hand; and if I ſhould deliver this as my private Opinion, in the mean while, that (as the Bill is already paſt into an Act of Parliament, by the King and Wiſdom of the Nation) every dutiful and honeſt Subject, as a private Perſon, ought to acquieſce in it, and obey it, either by performing what the Acts enjoins, or, if Conſcience or Honour will not allow him to do that, by ſubmitting patiently to the Penalties and Puniſhments which it inflicts: If I ſhould deliver this, I ſay, as my private Opinion, I ſhall leave every Body to determine from Reaſon, how far it agrees with his own?

FIDELIO. F, A, C.

Whether or not the above said Act does not put it entirely out of the Power of the Civil Government to inflict Church-centures, such as the honoring to sit in Kirk-sessions, Presbyteries, Synods and General Assemblies, upon the Clergy of the Church of *Scotland* now and in all Time coming?

Whether or not the Reasons for enacting the above said Act at first, be not as strong and binding now as ever, &c. the Representatives of this Part of the Nation being so inconsiderable in Opposition to those of the other, and our having no Members out of the Body of our Clergy to represent the Church, as those of the other Part of the Nation have?

Whether or not therefore the Presbyterian Clergy of the Church of *Scotland* do not make a Body and Government by themselves, as Church-men, entirely separated from and independent of the Civil Government?

Whether or not the Civil Government can impose any Thing, or inflict Punishments upon them in the Capacity of Members of the Church of *Scotland*, or in any other Capacity but that of Subjects, and so liable to the same Laws and Punishments only with other Subjects?

These are some Doubts which I should be glad to have resolved by an abler Hand; and if I should deliver this as my private Opinion, in the mean while, that (as the Bill is already past into an Act of Parliament, by the King and Wisdom of the Nation) every dutiful and honest Subject, as a private Person, ought to acquiesce in it, and obey it, either by performing what the Acts enjoins, or, if Conscience or Honour will not allow him to do that, by submitting patiently to the Penalties and Punishments which it inflicts: If I should deliver this, I say, as my private Opinion, I shall leave every Body to determine from Reason, how far it agrees with his own?

FIDELIO F, A, C.

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